(1) (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5086/2004

PETITIONER
DEF/RESP NO.1

Smt. Lili Kujur, aged about 40 years, widow of Late Arun Kujur, occupation – Suspended Supervisor, Mahila Bal Vikas, permanent resident of village – Girang, Post Office Gholang, Tah. And Distt. Jashpur (C.G)

Presently office address – Chief Executive Officer, Janpad Panchayat Office Bageecha, Post Bageecha, Distt. Jashpur.

P.R. No. 5073/04
Presented by Shri Amit Uma Patel
dated 30-12-04

VERSUS

RESPONDENTS
PLAINTIFF

1. Munkuram Sarthi, s/o Late S.R. Sarthi, aged about 58 years, occupation – Service, Collector – Jashpur, resident of village Jatari and Chakradhar Nagar, Raigarh, Tah. And Distt. Raigarh (C.G.) (Presently retired)

RESPONDENT
DEF NO.2

2. Udairam Thawayeet, son of B.R. Thawayeet, aged about 62 years, Printer & Editor, through : Raigarh Ofset Printers, Ramleela Maidan, Raigarh (C.G.)

RESPONDENT
DEF NO.3

3. Hemant Thawayeet, son of Udairam Thawayeet, aged about 30 years, Editor Dainik Keloprawah, Ramleela Maidan, Raigarh (Chhattisgarh)

(40)

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP. 5086/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

13-1-2005

On a mention being made, the matter is taken up for hearing.

Smt. Hamida Siddique, counsel for the petitioner.

Shri P. S. Koshy, counsel takes notice for respondent No.1, who is the plaintiff before the trial Court.

I have heard learned counsel for the parties.

Learned counsel for respondent No.1 does not want to file reply of the writ petition and he wants to argue the matter on its merit. Therefore, learned counsel for respondent No.1 argued that the petitioner herein, who is the defendant No.1 before the trial Court, is adopting the delaying tactics and by instant application for amendment of the written statement is one of such step, therefore, this writ petition be disposed of and he is ready to argue the case.

Learned counsel for the petitioner submitted that the amendment sought by the petitioner herein was consequential to the registration of the criminal case based on the complaint of the petitioner and such a plea could not have been taken before the registration of the criminal case against respondent No.1. The order of the trial Court is perverse, as it has been mentioned in the impugned order that amendment which the defendant is seeking has already been taken in paras-16 and 18 of the written statement, which is totally contrary to the record, therefore, the writ petition deserves to be

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

allowed and the petitioner may be allowed to amend the written statement.

On the other hand, Mr. Koshy, while supporting the order of the trial Court, submitted that the impugned order in question is not perverse or contrary to the settled principles of law, therefore, this Court should not interfere with the order passed by the trial Court under Article 227 of the Constitution of India. Under Article 227 of the Constitution of India the High Court is entitled to interfere with the order of the Court below where the Court below has passed the order having no jurisdiction or the Court below has failed to exercise the jurisdiction so vested or acted in exercise of its jurisdiction illegally or with material irregularity. If the order impugned is allowed to exist, then same will be failure of the justice.

In view of the above, if we look into the facts of the present case, respondent No.1 has filed the suit against the petitioner herein for defamation and compensation of Rs.5 lacs on the ground that some false allegations are levelled against the petitioner/plaintiff and same were published in the paper. Written statement has already been filed. During the pendency of the suit on the complaint of the petitioner herein a criminal case bearing No.113/2004 under Sections 376 and 342 of the I.P.C. has been registered on 6-5-2004. By this amendment the petitioner herein wants to raise the plea regarding registration of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

criminal case against respondent No.1 raising the same as a defence to the petitioner's claim based on the petitioners' plaint. The trial Court has rejected the amendment on the ground that the plea which the defendant wants to take by the amendment has already been taken in paras-16 and 18 of the written statement.

Perusal of paras 16 and 18 of the written statement reveals that no such plea regarding registration of the criminal case against respondent No.1 herein and plaintiff in that suit has been raised in the written statement. The test for deciding the application for amendment of the pleadings under Order 6 Rule 17 of the C.P.C. is that 'the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.' In the present case by the instant amendment of written statement the petitioner herein wants to raise the defence against claim of the petitioner, therefore, the amendment in question goes to the root of the suit. Therefore, order impugned is perverse being based on the ground which is not existing in the written statement, therefore, in my opinion, this writ petition deserves to be allowed.

Gr. PRJ—FS/350—12/2000—50,000.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Barve	In the result, the writ petition is allowed and the impugned order is set aside. The trial Court is directed to proceed further in the matter in accordance with law. However, as argued by learned counsel for respondent No.1, the trial Court should try to expedite the trial in accordance with law. In view of this order, M.(W.)P. No.5306/2004 and I.A. No.9978/2004 stand disposed of. Parties are entitled for certified copy of this order. Sd/- L.C. Bhadoo Judge	

G. PRJ—FS/350—12/2000—50,000.